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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 V5 TECHNOLOGIES, LLC, d/b/a/ COBALT
8 DATA CENTERS,

9 Plaintiff,

10 v.

11 SWITCH, LTD., *et al.*,

12 Defendants.

Case No. 2:17-cv-2349-KJD-NJK

ORDER

13 Before the Court is defendant Switch, LTD.'s Objection/Appeal to Magistrate Judge
14 Koppe's Order on Switch's Motion to Compel Discovery (ECF No. 165) to which plaintiff, V5
15 Technologies, LLC d/b/a Cobalt Data Centers, responded (ECF No. 169). Following Cobalt's
16 response, Switch moved for leave to file a reply (ECF No. 172) to which Cobalt responded and
17 conditionally requested leave to file a sur-reply (ECF No. 178). The Court has performed a de
18 novo review of the magistrate judge's order under 28 U.S.C. § 636(b)(1)(A) and LR IB 3-1 and
19 finds that her ruling is not clearly erroneous or contrary to law. Therefore, the Court **ADOPTS**
20 and **AFFIRMS** Magistrate Judge Koppe's order but will briefly address Switch's argument that
21 the order is contrary to law based on Cobalt's improper deposition objections. The Court will
22 also resolve Cobalt's competing request for attorney fees.

23 This discovery dispute arises out of Switch's attempts to determine the extent to which a
24 third-party is funding Cobalt's lawsuit. Switch has attempted to discover the identity of the third-
25 party throughout the discovery process. It has requested the retainer agreements between Cobalt
26 and its law firms as well as any other document that would shed light on who is paying Cobalt's
27 bills. Switch has also tried to uncover the information during depositions of Cobalt's witnesses.
28 During those depositions, Switch asked witnesses if they knew how this lawsuit was financed

1 and who was funding it. Cobalt's counsel repeatedly instructed witnesses not to answer Switch's
2 questions. Counsel has also refused to provide Switch the requested retainer agreements and
3 other financial documents. Cobalt believes it is under no obligation to produce third-party
4 financing information because the information is irrelevant to the parties' claims or defenses and
5 is otherwise shielded by the attorney-client privilege. Switch disagreed and moved to compel
6 production of those documents. Switch also moved to compel Cobalt's witnesses to answer
7 Switch's deposition questions.

8 Magistrate Judge Koppe denied Switch's motion. She found that this case does not fall
9 into the narrow category of cases where third-party funding information is relevant to the parties'
10 claims and defenses. See M.J. Order 7, ECF No. 160. Because the information was not relevant,
11 Switch was not entitled to an order compelling production of those documents.¹ Switch's request
12 to compel deposition testimony met the same obstacle. Because the third-party funding
13 information was not relevant, Switch was not entitled to additional deposition testimony. The
14 order did not excuse Cobalt's instruction to witnesses not to answer depositions questions based
15 on relevance. Id. at 10. To the contrary, Magistrate Judge Koppe found that Cobalt's instructions
16 not to answer questions was improper. Id. However, Switch was not entitled to the third-party
17 funding information as a remedy. In short, Magistrate Judge Koppe refused to compel production
18 of irrelevant information even though it was improper for Cobalt to refuse to answer those
19 questions. This appeal followed.

20 The Court enjoys broad discretion to permit or deny discovery. Hallett v. Morgan, 296
21 F.3d 732, 751 (9th Cir. 2002). Generally, magistrate judges decide discovery issues, and the
22 parties may appeal those decisions to the district court. See 28 U.S.C. § 636 (b)(1). This Court
23 may set aside any part of a magistrate judge's order if it is clearly erroneous or contrary to law.
24 Id.; Fed. R. Civ. P. 72(a). Where, as here, the appeal concerns the relevance of discoverable
25 information, the Court applies the "clearly implicit" abuse-of-discretion standard. Geophysical
26 Sys. Corp. v. Raytheon Co., Inc., 117 F.R.D. 646, 647 (C.D. Cal. 1987). Thus, the Court will

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28 ¹ Magistrate Judge Koppe declined to reach the parties' privilege arguments because the relevance of the
sought-after information was dispositive. See M.J. Order 9 n.8, ECF No. 160.

1 only disturb the magistrate judge's order if the record lacks evidence upon which the magistrate
2 judge "rationally could have based [its] decision." Perry v. Schwarzenegger, 268 F.R.D. 344, 348
3 (quoting Wolpin v. Philip Morris Inc., 189 F.R.D. 418, 422 (C.D. Cal. 1999) (citations omitted)).

4 Magistrate Judge Koppe's order is not clearly erroneous or contrary to law. Switch's
5 appeal primarily disputes Magistrate Judge Koppe's refusal to compel additional deposition
6 testimony despite her finding that Cobalt improperly instructed witnesses not to answer questions
7 about third-party funding. Switch reasons that the order must be contrary to law because "it
8 sustains an objection that the Court itself recognizes as improper." D.'s Obj. to M.J. Order 6,
9 ECF No. 165.

10 Magistrate Judge Koppe carefully considered that issue and determined that the Court's
11 duty to limit discovery that is outside of Rule 26(b)(1)'s scope trumped Switch's right to
12 discover otherwise irrelevant information. M.J. Order 10, ECF No. 160. The information that
13 Switch sought through discovery fell outside Rule 26's scope because it was not relevant. The
14 situation presented the Court a catch-22. Had the magistrate judge compelled further discovery
15 as Switch asked, she would have faced a similar challenge from Cobalt—that it was contrary to
16 law to compel discovery of information not relevant to its claims or defenses. Instead, the
17 magistrate judge excluded irrelevant information despite Cobalt's improper objections during
18 depositions. That decision fell squarely within the magistrate judge's broad discretion over
19 discovery issues, and there is ample evidence on the record to support that decision. Therefore,
20 the Court finds that Magistrate Judge Koppe did not abuse her discretion in denying Switch's
21 motion and adopts and affirms her order.

22 Finally, Cobalt asks the Court to order Switch to pay the fees and costs it incurred
23 defending Switch's appeal. Though Rule 72 does not contain a fee-shifting provision, there is
24 precedent in this district to order attorney fees to the prevailing party in a discovery appeal. See
25 Marrocco v. Hill, 291 F.R.D. 586, 590 (D. Nev. 2013). The Court has broad discretion when
26 calculating and awarding attorney fees. See Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978
27 (9th Cir. 2008). Cobalt seeks reimbursement for its costs under Rule 37(a)(5)(B). It argues that
28 Switch's appeal was unnecessary and frivolous. That is a bold argument considering that Switch

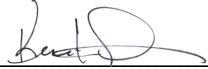
1 based its appeal partly on the magistrate judge's finding that Cobalt improperly objected to
2 Switch's deposition questions and escaped having to answer those questions under a faulty
3 relevance objection. Regardless, the Court finds that Switch had a reasonable basis to bring its
4 appeal even though it was ultimately unsuccessful. Therefore, the Court denies Cobalt's request
5 that Switch reimburse the fees and costs Cobalt incurred defending this appeal.

6 **III. Conclusion**

7 Accordingly, IT IS HEREBY ORDERED that Magistrate Judge Koppe's Order Denying
8 Defendant's Motion to Compel (ECF No. 160) is **ADOPTED** and **AFFIRMED**.

9 IT IS FURTHER ORDERED that Switch, LTD.'s Objection/Appeal to Magistrate Judge
10 Order (ECF No. 165) and Switch LTD.'s Motion for Leave to File Reply (ECF No. 172) are
11 **DENIED**.

12 Dated this 3rd day of March, 2020.

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16 Kent J. Dawson
17 United States District Judge
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